



THE UNIVERSITY OF
SYDNEY

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Ms Gabrielle Burrell
Assistant Secretary
Defence Export Control Office
Department of Defence
Canberra BC ACT 2610

By email: DECO_SEC@defence.gov.au

Dear Ms Burrell,

Implementation of the Defence Trade Controls Amendment Bill 2015

Thank you for the opportunity to provide comment on the *Defence Trade Controls Amendment Bill 2015 (Cth) (the Bill)*.

On behalf of the University of Sydney I would like to thank the Chief Scientist; members of the Strengthened Export Control Group and its working groups; and staff in the Departments of Defence and Industry for the considerable effort that has been made over the last two years to improve the *Defence Trade Controls Act 2012 (Cth) (the Act)*.

We are very pleased that many of the concerns raised by the university sector during the development of the legislation in 2012 are addressed by amendments proposed in the Bill, and commend the Defence Export Controls Office (**DECO**) for the approach taken to consulting with stakeholders in the research community since the Act was passed.

It is clear from the explanatory material released by DECO that it has sought to find practical solutions to minimise the regulatory burden of the control regime, and has tried to ensure Australian industry and research is not disadvantaged compared to international benchmarks. If passed into law, we are confident that the measures proposed in the Bill will significantly reduce the compliance burden for universities and deliver a regulatory framework that is much better targeted at activities that present real risk. The resulting regulatory regime will be of greater overall benefit and more cost-effective for Government, industry and the public sector research community.

In particular, we welcome the following proposed changes as essential:

- the exemption for publication of controlled dual use technology;
- the exemption for most verbal supplies of controlled dual use technology;
- the exemption for some pre-publication supplies of controlled dual use technology;
- the ability to obtain broad permits at the project level, which may apply for up to five years;
- the commitment to introduce streamlined permit processing for lower-risk supplies; and
- the requirement that the operation of the new Act must be reviewed in two years, and then every five years.

The Bill also proposes important amendments to the 'brokering' provisions of the Act. While these controls will rarely apply to research undertaken in the university sector, the easing of the requirements should benefit our industry partners.

While we strongly support these improvements to the Act, it will be vital for DECO to work with stakeholders on the detail over the coming months. For example, DECO's consultation sessions have been useful in highlighting the need for more detail and clarity in areas including the following:

- the application of the control regime to academic teaching activities that are recorded and accessed electronically;
- the activities that will be covered by the proposed pre-publication exemption;
- multi-jurisdictional issues - for example, the requirements where an Australian researcher travels overseas and communicates in relation to DSSL technology;
- the operation of the proposed exemptions for patents and medical devices;
- how the proposed streamlined permit system will work with the Australian General Export Licences (AUSGELs); and
- the detail of the record keeping requirements for researchers and institutions.

We would be happy to discuss or elaborate on each of these issues if that would be of assistance and acknowledge the commitments DECO's staff have given at recent briefing sessions about the value of continuing dialogue with the research sector. Ongoing cooperation between DECO and the research community will be essential given the complexity involved.

Our key remaining concerns, however, relate to the practicalities of implementation. With the Act's offence provisions due to take effect from 16 May 2015, instituting a fully functional system of due diligence and institutional compliance across a university of any significant size in the time between the commencement of the amendments and the start of the offence provisions is simply not reasonable or realistic. Moreover, the details of the permit system have not yet been widely shared, and DECO is yet to release two long awaited online tools and other support material that will be essential for compliance and training.

We therefore strongly support Universities Australia's call for the commencement of the offence provisions to be extended by a further 12 months. Unless such an extension is provided it is highly likely that research institutions will take a risk-averse approach to compliance, resulting in an unmanageable flood of inquiries and permit applications to DECO that could undermine its capacity for effective implementation in the critical early stages of the scheme's administration. A further 12 month delay in the commencement of the offence provisions would avoid this. It would allow time for DECO to finalise its guidance tools and materials, clarify remaining areas of ambiguity, and establish ongoing governance and consultative structures. The extra time would also enable institutions to establish their compliance frameworks and conduct necessary training with much more certainty about their obligations.

We also strongly support Universities Australia's calls for the Strengthened Export Control Steering Group (SECSG) to continue its role for at least another two years. The Steering Group, with strong support from its expert working groups, has played a critical role, ensuring that the concerns of stakeholders are heard and addressed. Many important details will need to be finalised during the implementation of the Bill and ongoing independent monitoring and advice will be invaluable.

In addition, proposed amendments to the Bill require the operation of the Act (other than Parts 3 and 4) to be reviewed two years after the commencement of the offence provisions, but do not specify the body or individuals who will conduct the review. It will be critical that the review is independent, and we recommend that the SECSG and its working groups are maintained to monitor implementation and conduct or oversee the first review of the scheme's operation.

We also consider that the use of external expertise to assist the Minister in determinations under the Act will be necessary in many cases related to the research sector and recommend that a formal mechanism be established whereby such expertise is available to support DECO and the Minister on a permanent basis.

Finally, given the significance of the national security and research issues at stake with this legislation, we believe that the Senate Foreign Affairs, Defence and Trade Committee should continue to provide Parliamentary oversight of the first two years of the amended Act's implementation.

Yours sincerely,

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cc

The Hon. Kevin Andrews MP, Minister for Defence
Senator Chris Back, Chair, Senate Standing Committee on Foreign Affairs, Defence
and Trade Legislation
Professor Ian Chubb AC, Chief Scientist of Australia
Professor Mary O'Kane, NSW Chief Scientist and Engineer
Dr Alex Zelinsky, Chief Defence Scientist of Australia
Ms Belinda Robinson, Chief Executive, Universities Australia
Ms Vicki Thomson, Chief Executive, Group of Eight Australia